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LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201				
EXAMINER				
AVELLINO, JOSEPH E				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/828,401

## Applicant(s)

LITTLE, CHARLES REEVES

## Examiner

Joseph E. Avellino

## Art Unit

2146

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-39 are pending.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "a computing device", however it cannot be understood what this computing device is particularly dealing with. Correction is required.

***Specification***

4. Claims 28-34 are objected to because of the following informalities:
5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the Specification does not provide proper support for the term "computer readable medium".

***Claim Rejections - 35 USC § 101***

6. In light of the amendments to the claims, the Office withdraws the rejection under this statute.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-9, 11-14, 17-22, 24, 25, 27-29, 31-36 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Berger (US 2004/0268265).

7. Referring to claim 1, Berger discloses a presence based seamless messaging method comprising:

from within a computing environment for sending a message via a user interface associated with a first communications medium (i.e. email client) (Figure 4a; ¶ 32), detecting a current live presence of a potential message recipient who can be reached via a second communications medium (i.e. use presence information from the instant messaging client to determine whether the message sender is logged in or logged off a particular account) (¶ 40);

transforming the user interface to include an option of using the second communications medium (i.e. if the message sender is online, then including the option in the communication menu 400, if the user is not logged in to an account, the module may not include an option for that account...if the caller is logged in to an instant messaging account, the multi-mode communication module 300 generates an option to send an instant message within the incoming call dialog in the form of an "instant message" button) (¶ 40-41); and

activating the second communications medium in response to the detecting (i.e. the user selects the "send IM" button in order to reply to the email via instant messaging...easily switch between communication modes) (¶ 30-33).

8. Referring to claim 2, Berger discloses running multiple communications programs for instantly sending the message via one of the communications programs (i.e. communication modes such as voice telephony, IM, email, MMS, etc.) (¶ 30).

9. Referring to claim 3, Berger discloses transitioning to a user interface for the second communications medium in response to the detecting (i.e. an inherent feature, otherwise the user would be unable to reply to the message via instant messaging) (¶ 31).

10. Claim 4 is rejected for similar reasons as stated above (a user interface for an instant messaging application is a message composition environment).

11. Referring to claims 6 and 7, Berger discloses offering a choice of sending the message to the potential recipient via the second communications medium (i.e. generate a menu based on the presence and contact information) (Figures 4a-4b; ¶ 40-41).

12. Referring to claim 8, Berger discloses the message transfer options depend on the number of communications media to which a potential recipient is present (i.e. if a user is logged into Yahoo and AOL, offering both choices) (Figures 4a-4b).

13. Referring to claim 9, Berger discloses displaying a one-click control option if the recipient is present to the second communications medium, and removing the display of the option if the user is not present (Figures 4a-4b; ¶ 40-41).

14. Claims 11-14, 17 and 18 are rejected for similar reasons as stated above.

15. Referring to claim 19, Berger discloses the use of address book databases (¶ 29).

16. Claims 20-22, 24, 25, 27-29, 31-36 and 38 are rejected for similar reasons as stated above.

***Claim Rejections - 35 USC § 103***

17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5, 15, 16, 23, 30, 37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger in view of Day et al. (US 2005/0027839) (hereinafter Day).

18. Referring to claim 5, Berger discloses the invention substantively as described above in claim 1. Berger does not explicitly disclose transferring a part of the unsent message to another message composition environment associated with a second composition medium. In analogous art, Day discloses another message composition system which discloses switching to a different GUI for a different medium and importing the text from an unsent message to this new GUI (¶ 45). It would have been obvious to one of ordinary skill in the art to combine the teaching of Berger with Day in order to save the user time in having to retype the message from one window to another.

19. Claims 15, 16, 23, 30, 37, and 39 are rejected for similar reasons as stated above.

Claims 10 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger in view of Gang et al. (US 2008/0027909) (hereinafter Gang).

20. Referring to claim 10, Berger discloses the invention as described in claim 1. Berger does not specifically disclose the sensing of multiple potential recipients. IN analogous art, Gang discloses another messaging system which discloses sending a message to a plurality of users based on their presence to a chat room, IM, or email clients (§¶ 69-70). It would have been obvious to one of ordinary skill in the art to combine the teaching of Gang's reply messaging system to the reply mechanism of Berger in order to provide an efficient method to disseminate information to a plurality of users based on their online presence.

21. Referring to claim 26, Berger discloses the invention as described in claim 24. Berger further discloses prioritizing reply messaging based on presence information (§¶ 40). Berger does not explicitly disclose the use of group chat, and the use of an instant reply function for a plurality of recipients. In analogous art, Gang discloses another messaging system which discloses initiating communication using IM, a chat room, or E-mail based upon online presence (§¶ 7; 39-40, 69-70). It would have been obvious to one of ordinary skill in the art to combine the teaching of Gang's reply messaging system to the reply mechanism of Berger in order to provide an efficient method to disseminate information to a plurality of users based on their online presence.



***Response to Arguments***

22. Applicant's arguments dated March 17, 2008 have been fully considered but are not persuasive.

23. Applicant argues, in substance, that the term "computer readable medium" is supported by the specification. The Examiner disagrees. Page 23 merely discloses how to bring unsent message content from a prior medium to a subsequent medium. The medium in this case is the mode of communication (i.e. email, IM, etc.). This is different than a computer readable medium to store instructions and therefore the objection is maintained.

24. Applicant argues, in substance, that Day does not deal with online presence, rather transitions from one client application to another when the size of the message is above a certain length. The Examiner agrees. The Examiner never stated that Day was there to refute the online presence, rather the transfer of text from one medium to another. Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

25. Applicant's other arguments are considered moot in view of the new grounds of rejection presented above.

***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph E. Avellino/  
Primary Examiner, Art Unit 2146